

6ABMSKIC



1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----X

3 IN RE: SKI TRAIN FIRE
4 IN KAPRUN, AUSTRIA
-----X

Original
01 MDL T428 (SAS)

New York, N.Y.
October 11, 2006
1:30 p.m.

7 Before:

8
9 HON. SHIRA A. SCHEINDLIN,

DOC # 224

District Judge

10 APPEARANCES

11 EDWARD D. FAGAN
12 Liaison Counsel to Class Plaintiffs

13 REED SMITH
14 Attorneys for Defendant
15 Bosch Rexroth Corporation
16 BY: PAUL P. ROONEY

17 BARTLETT McDONOUGH BASTONE & MONASHAW
18 Attorneys for Defendant Omniglow
19 BY: E. GORDON HAESLOOP

20 MORRISON MAHONEY, LLP
21 Attorneys for Defendant Bosch Rexroth AG
22 BY: AART SONI
23
24
25

6BHbwskic

1 by competent counsel.

2 MR. FAGAN: On a different theory, your Honor.

3 THE COURT: That's what I said. Tell him what new
4 areas you wish to go into. You can write some kind of outline
5 what you intend to cover and maybe you won't have a dispute.
6 If it's done, I'll rule.

7 MR. FAGAN: I made a stipulation with Mr. Haesloop
8 that I would not ask a single question that was asked before.
9 Here's the plaintiff's theory. We delivered actually --

10 THE COURT: That's nice that you wouldn't ask the same
11 questions. Can you outline the areas, just the areas that you
12 wish to cover that were not already covered?

13 MR. FAGAN: The distribution network, your Honor, in
14 addition to the distribution network, the way the light sticks
15 themselves contributed to the explosion sequence. The other
16 plaintiffs have a different theory on the explosion sequence.
17 I mentioned to Mr. Haesloop and they know this already. We've
18 actually offered them an accident reconstruction video that we
19 were able to recreate. According to one expert, there was --

20 THE COURT: I need to resolve these disputes one by
21 one and quickly, Mr. Haesloop. I think he has the right to
22 depose 30(b)(6) witness on behalf of his clients. I think he
23 has that right. He's given his word which he will be able to
24 lodge an objection to he will not repeat any question areas not
25 covered according to him under a different theory. You have to

6CI7SKIM

1 you want to move against this service?

2 MR. BISHOP: The question -- a couple of questions.

3 THE COURT: The November 22 service, do you want to
4 move against it?

5 MR. BISHOP: Which Siemens Transportation Systems
6 company in which case?

7 THE COURT: Beats me.

8 MR. FAGAN: Siemens Transportation Systems Corp. in
9 the New York cases. They were served at CT Corporation.

10 THE COURT: I see that. November 22, CT Corp.

11 MR. BISHOP: The question relates to the e-mail that
12 Mr. Fagan sent today changing the configuration of the
13 defendants in the cases.

14 THE COURT: Well, he basically deconsolidated because
15 consolidation was causing a different problem, so I had told
16 him several conferences ago to separate those back out, and I
17 think that's all he did.

18 MR. BISHOP: So this is Geier and Blaimauer.

19 MR. FAGAN: Yes, it's Geier and Blaimauer.

20 THE COURT: That's probably correct. Exactly right,
21 it's Geier and Blaimauer.

22 Now, do you want to challenge that service or not? I
23 should ask Mr. Fagan first, are you done in your opinion on
24 this one?

25 MR. FAGAN: We are.

6ABMSKIC

1 and certificates of service. The service started on October 5.
2 I have to look at the exact date, Judge. All I'm suggesting
3 is, I will, between now and tomorrow at this time, I'll file
4 the affidavits and certificates of service.

5 THE COURT: If you'd rather contest service, then just
6 move on the statute of limitations, please do it on the same
7 schedule. If you're accepting that the service was good, then
8 please coordinate on the statute of limitations issue. So
9 there is one set of briefing. She agrees.

10 MR. FAGAN: Thank you.

11 There are other defendants. The Siemens defendants
12 are not here, your Honor. Could we just have an order where
13 whoever it is --

14 THE COURT: Who are you adding there? Are you adding
15 somebody now in this new amended complaint that's being filed
16 tomorrow?

17 MR. FAGAN: It's the names of who they are here in the
18 United States, your Honor.

19 THE COURT: So it should be the same issue --

20 MR. FAGAN: It should be the same issue.

21 THE COURT: -- that Mr. Rooney is raising.

22 MR. FAGAN: Yes.

23 MR. ROONEY: I'm not sure that all the dates that
24 apply to my company also -- in terms of the statute of
25 limitations apply to Siemens or any other defendant.

6ABMSKIC

1 THE COURT: But they are very likely going to be
2 making a statute of limitations motion to a complaint that's
3 filed in the fall of '06.

4 MR. ROONEY: True, your Honor.

5 THE COURT: Would somebody be willing to communicate
6 to them the briefing schedule?

7 MR. FAGAN: I will, your Honor.

8 THE COURT: Who is their lawyer?

9 MR. HAESLOOP: Grant Bishop and Bob Littleton.

10 THE COURT: I'm allowing the amendment to be filed.
11 It's a procedural permission so we get the motions going. It's
12 just to tee up the statute of limitations motion issue.

13 That get us to the next part of this thing, which is
14 successor liability. The defense counsel, Mr. Rooney, writes
15 that this is premature. We aren't going to do this twice.

16 Mr. Rooney, when do you think it is appropriate to do
17 it? Let me back up. If you won on statute of limitations,
18 would the successor liability question disappear?

19 MR. ROONEY: I believe so, yes. It's just that I'm
20 not clear what Mr. Fagan's motion proposed motion exactly is.

21 THE COURT: It's sort of like the Court should declare
22 that so and so is responsible for somebody else's tortious
23 activity.

24 MR. ROONEY: First, we should find who is liable and
25 then we can find out whether their successors are liable. That